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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/160,424	09/25/1998	SCOT L. SCHNEEBELI	1215	6327
21396	7590	02/07/2011	EXAMINER	
Sprint			SURVILLO, OLEG	
6391 SPRINT PARKWAY				
KSOPHT0101-Z2100			ART UNIT	PAPER NUMBER
OVERLAND PARK, KS 66251-2100			2442	
			MAIL DATE	DELIVERY MODE
			02/07/2011	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SCOT L. SCHNEEBELI, TERRY LEE OEHRKE,
and SCOTT CHRISTOPHER WELLS

Appeal 2009-007838
Application 09/160,424
Technology Center 2400

Before: ROBERT E. NAPPI, THOMAS S. HAHN, and CARL W.
WHITEHEAD JR., *Administrative Patent Judges.*

NAPPI, *Administrative Patent Judge.*

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

This is a decision on appeal under 35 U.S.C. § 134(a) of the rejection of claims 1 through 22, 24 through 31, 33 through 41, 43 through 46, and 48 though 54.

We affirm-in-part.

INVENTION

The invention is directed to a network for publishing software which includes production and staging areas. See pages 4 and 5 of Appellants' Specification. Claim 1 is reproduced below:

1. A system for publishing network content, the system comprising:
 - (a) first and second production servers wherein each production server provides production content to content users of a computer network in response to requests routed to the production server from the content users;
 - (b) a staging server operatively connected to each of the first and second production servers, wherein staging content is generated, edited and/or tested by an administrator on the staging server and wherein the staging content is automatically transferred from the staging server to the first and second production servers for publication on the first and second production servers at substantially the same time in response to a publish command received on the staging server, wherein the transferred staging content published on each of the production servers is the same staging content; and
 - (c) wherein the transferred staging content replaces the production content on the production server such that the transferred staging content becomes subsequent production content accessible by the content users of the computer network, and wherein access to the staging server is limited such that the staging content is not accessible by the content users prior to the transfer to the production server.

REFERENCES

Jain	US 5,806,075	Sep. 8, 1998
Beck	US 6,026,371	Feb. 15, 2000

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Chang	US 6,026,371	Oct. 17, 2000
Inohara	US 6,182,111 B1	Jan. 30, 2001

REJECTIONS AT ISSUE

The Examiner has rejected claims 1, 2, 6, 9, 14 through 16, 27, 30, 31, 34, 37, and 51 through 54 under 35 U.S.C. § 103(a) as being unpatentable over Beck in view of Inohara. The Examiner's rejection is on pages 4-11 of the Answer.²

The Examiner has rejected claims 33, 38, 41, 43, 44, 46, 48, and 49 under 35 U.S.C. § 103(a) as being unpatentable over Beck in view of Inohara and Jain. The Examiner's rejection is on pages 11-16 of the Answer.

The Examiner has rejected claims 3 through 5, 7, 8, 10 through 13, 17 through 22, 24 through 29, 35, 36, 39, 40, 45, and 50 under 35 U.S.C. § 103(a) as being unpatentable over Beck in view of Inohara and Chang. The Examiner's rejection is on pages 16-18 of the Answer.

ISSUES

Appellants argue on pages 11 through 16 of the Brief³ that the Examiner's rejection of independent claims 1, 14, 30, 37, and 51 under 35 U.S.C. § 103 is in error. Appellants' arguments present us with the following issues:

² Through out this Decision we refer to the Examiner's Answer dated July 25, 2008.

³ Throughout this Decision we refer to the Appeal Brief dated March 7, 2008 and Reply Brief dated September 15, 2008.

First issue: Did the Examiner err in finding the combination of Beck in view of Inohara teaches transferring of staging content to first and second production servers at substantially the same time?

Second issue: Did the Examiner provide a proper rationale to combine Beck in view of Inohara?

Third issue: With respect to claims 30 and 37, did the Examiner err in finding that the combination of Beck in view of Inohara teaches the first and second access levels as claimed?

Appellants' arguments on pages 16 and 17 of the Brief, directed to independent claims 41 and 46 present us with the first two issues identified above.

Appellants' arguments on pages 16 and 17 of the Brief, directed to the dependent claims assert that they are allowable for the reasons discussed with respect to the independent claims.

ANALYSIS

First Issue

Appellants' arguments have not persuaded us that the Examiner erred in finding that the combination of Beck in view of Inohara teaches transferring of staging content to first and second production servers at substantially the same time. Appellants state that "Beck does not disclose the 'publication' and 'at substantially the same time' limitations in that it discloses only the exportation of an advertisement from a staging database to

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a single production database.” Brief 13. Further, Appellants argue that the passages of Inohara cited by the Examiner do not teach publication at substantially the same time. Brief 13-14, Reply Brief 2-5. In response, the Examiner finds that Inohara teaches transmitting requests (data) to a plurality of servers via multicast or broadcast, which one of ordinary skill in the art would recognize means transmission to multiple users at substantially the same time. Answer 19.

We concur with this finding by the Examiner and note that Appellants have not addressed this finding by the Examiner. Further, we note that Inohara teaches in column 14, lines 22-35, that it is known to transmit to plural servers at the same time or sequentially, and that each procedure has its advantages and disadvantages.

Further, Appellants’ arguments directed to “publishing” involving use of a replication daemon that moves data from the production area to the publication directory are not persuasive. Brief 13. As discussed by the Examiner (Answer 19-20), this argument is not commensurate in scope with claim 1 and improperly reads limitations from the Specification into the claims. We concur.

Thus, Appellants’ arguments directed to the first issue have not persuaded us of error in the Examiner’s rejection of independent claims 1, 14, 30, 37, and 51.

Second Issue

Appellants’ arguments have not persuaded us that the Examiner erred in providing a proper rationale to combine Beck in view of Inohara. Appellants argue that the references do not teach how one would go about

modifying the references to achieve publication at the same time and as such the rejection is based upon hindsight. Brief 14-15, Reply Brief 6. We are not persuaded by this argument.

The Supreme Court has stated that “The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007). “If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability.” *Id.* at 417.

The Examiner has found that the combination would result in caching data to two or more servers in order to provide data as well as maintaining coherency between two servers and allows for simultaneous data updates. Answer 21. We concur with this rationale because the use of additional servers along with simultaneous transmission is nothing more than using known elements for their predictable functions. Thus, Appellants’ arguments have not persuaded us of error in the Examiner’s rejection of independent claims 1, 14, 30, 37, and 51.

Third Issue

Appellants’ arguments have not persuaded us of error in the Examiner’s finding that the combination of Beck in view of Inohara teaches the first and second access levels recited in claim 30, but have persuaded us of error with respect to claim 37. The Examiner finds that Beck discloses limiting access to a staging server for generating staging content (first level) and limiting access for the publish command (second level). Answer 22. Appellants’ arguments directed to these findings focus on these two activities in Beck being performed by the same client, and thus

not disclosing a second access level. Reply Br 7-8. With respect to independent claim 30, we are not persuaded by this argument. There is no limitation in claim 30 which recites that the two access levels are to be provided to different entities (clients or users). Thus, we concur with the Examiner's findings that the Beck two accesses meet the two access levels recited in claim 30. Independent claim 37, however, recites that a first access level is associated with a first user and a second access level is associated with a second user. The Examiner has not shown that Beck teaches two users with different access levels to perform different functions as recited in claim 37. Accordingly, Appellants' arguments have not persuaded us of error in the Examiner's rejection of independent claim 30, but have persuaded us of error in the Examiner's rejection of independent claim 37.

CONCLUSION

Appellants' arguments directed to the first and second issue have not persuaded us of error. As these arguments are the only arguments directed to the rejections of claims 1 through 22, 24 through 29, 41, 43 through 46, and 48 through 54 we sustain the Examiner's rejections of these claims.⁴

Appellants' arguments directed to the third issue have not persuaded us of error in the Examiner's rejection of independent claim 30, but have persuaded us of error in the rejection of independent claim 37. Accordingly

⁴ We note that claim 24 is ambiguous as it depends upon canceled claim 23, for the sake of this decision it is assumed to ultimately depend upon independent claim 14.

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we sustain: the Examiner's rejections of claims 30, 31, and 33 through 36; and will not sustain the Examiner's rejections of claims 37 through 40.

ORDER

The decision of the Examiner to reject claims 1 through 22, 24 through 31, 33 through 41, 43 through 46 and 48 though 54 is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2010).

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AFFIRMED-IN-PART

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